

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460

February 10, 2017

**Re: Freedom of Information Act Request**

Dear Freedom of Information Act Officer:

On behalf of the Center for Media and Democracy (CMD), a national non-profit, investigative news media organization, I am writing to request records pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, et seq.

With this letter, I am formally requesting an electronic copy of all records in the possession of the Environmental Protection Agency (EPA) that relate to:

- (1) evaluation of EPA Administrator nominee Edward Scott Pruitt's actual and apparent conflicts of interest, including all information provided to EPA by Mr. Pruitt or other parties, and all additional information relied on by the Agency and any others involved in evaluating existing or potential conflicts of interest, including apparent conflicts, pertaining to Mr. Pruitt;
- (2) development of the January 3, 2017 letter regarding steps to avoid actual or apparent conflicts of interest from Mr. Pruitt to Designated Agency Ethics Official Kevin Minoli, including all information provided to the Agency by Mr. Pruitt or other parties, and all additional information relied on by the Agency and any others involved in developing the letter;
- (3) to the extent not covered in the preceding paragraphs, the assessment of Mr. Pruitt's impartiality concerning matters that are, or may come, before the Agency, and all information relied upon by the Agency in evaluating Mr. Pruitt's impartiality concerning matters that are, or may come, before the Agency;
- (4) to the extent not covered in the preceding paragraphs, all communication or correspondence between the Agency and the U.S. Office of Government Ethics concerning any ethical matters related to Mr. Pruitt, including impartiality and conflicts of interest, including apparent conflicts; and
- (5) to the extent not covered in the preceding paragraphs, all communication or correspondence, prepared or transmitted between December 7, 2016 until such time as this request is addressed in full, between Mr. Pruitt and entities other than EPA, including members of the White House transition team.

Please note that the records sought by this request are identical to those sought by the Environmental Defense Fund in a request filed on January 24, 2017 (Request Number EPA-HQ-2017-003087).

I am requesting a fee waiver on behalf of CMD.<sup>1</sup>

CMD is entitled to a fee waiver because it is a news media organization, and because this request for records concerns activities or operations of the government. Disclosure of the requested records will likely increase public understanding of government operations since CMD has the ability and the intention, through the means described below, to effectively convey information contained within the requested records to a broad public audience.<sup>2</sup>

Founded in 1993, CMD's investigative research and reporting has appeared in local and national publications such as the New York Times, the Guardian, and the Washington Post. CMD documents key facts in order to reveal the impact of policies on ordinary people, and has received various awards for its investigative reporting.<sup>3</sup> In addition to using the information from this FOIA request to potentially generate news stories, CMD would also distribute information obtained and inform the public at large through various online platforms. For instance, CMD publishes information and investigative findings on a near daily basis through CMD's reporting websites, PRWatch and ExposedbyCMD. CMD also keeps its 8,500 twitter followers apprised of important policy issues.

Should this request for fee waiver be denied, I authorize \$100 in costs to be expended by for costs of duplication<sup>4</sup> of records. Please contact me prior to exceeding the \$100 limit.

I am requesting that this request be expedited pursuant to 40 C.F.R. § 2.104(e)(ii), since CMD is primarily engaged in disseminating information to the public (see above), and since there is a real urgency to inform the public about the steps taken by the EPA to evaluate apparent conflicts pertaining to Mr. Pruitt.

Mr. Pruitt, nominated to be Administrator of the EPA, is expected to receive a vote on his nomination by the U.S. Senate on or around February 15, 2017. It is therefore urgent that these records are released prior to this date. Such a release would allow any potential conflicts of interest pertaining to Mr. Pruitt to be properly understood and reported on by the media prior to this vote.

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<sup>1</sup> FOIA's fee waiver provision "is to be liberally construed in favor of waivers for noncommercial requesters." *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 Cong. Rec. S14,298 (Sept. 30, 1986) (statement of Sen. Leahy))

<sup>2</sup> See 40 C.F.R. 2.107; see also *Friends of the Coast Fork v. United States DOI*, 110 F.3d 53, 55 (9th Cir. 1997) (interpreting the fee waiver provision as a liberally construed multi-factor balancing test).

<sup>3</sup> See Center for Media and Democracy, About Us <http://www.prwatch.org/cmd> (last visited Mar. 17, 2016).

<sup>4</sup> See 40 C.F.R. 2.107(c).

I certify that my statements concerning the need for expedited processing are true and correct to the best of my knowledge and belief.

Any segregable portion of records not excluded under FOIA exemptions must be released.<sup>5</sup> Partially disclosed records should be marked so that the amount and location of deleted information is apparent as well as the reason and explanation that the agency maintained an exemption.<sup>6</sup>

Thank you for your time and effort in processing this FOIA request. In order to expedite the flow of information, CMD would like to receive documents on a rolling basis. Please contact me with any questions regarding this request.

Sincerely,

A handwritten signature in black ink, appearing to read "N. Surgey". The signature is stylized with a large "N" and a cursive "S" followed by a horizontal line.

Nick Surgey  
Center for Media and Democracy  
122 West Washington Avenue  
Suite 555  
Madison  
WI 53703

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<sup>5</sup> See 5 U.S.C. § 522(b).

<sup>6</sup> See *Chesapeake Bay Found. v. U.S. Army Corps. of Eng'rs.*, 677 F. Supp. 2d 101, 109 (D.D.C. 2009)(requiring evidence of agency compliance with segregability obligations).